IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS PINE BLUFF DIVISION

ARTHUR L. NEWTON,)	
ADC # 150179)	
Petitioner,)	Case No. 5:14-CV-00149 JM-JTK
v.)	
)	
RAY HOBBS, Director,)	
Arkansas Department of Correction)	
Respondent.)	

PROPOSED FINDINGS AND RECOMMENDATIONS

Instructions

The following recommended disposition has been sent to United States District Court Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

- 1. Why the record made before the Magistrate Judge is inadequate.
- 2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
- 3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court Eastern District of Arkansas 600 West Capitol Avenue, Suite A149 Little Rock, AR 72201-3325

Disposition

BEFORE THE COURT is Respondent Ray Hobbs's June 23, 2014 Motion to Dismiss. (Doc. No. 9). Petitioner did not file a response. After reviewing the parties' briefing and the available evidence, the Court finds that Respondent's Motion should be GRANTED and the Petition for Writ of Habeas Corpus (Doc. No. 2) should be DISMISSED.

Petitioner requests relief pursuant to 28 U.S.C. § 2254 for various reasons. He essentially made the same arguments in a petition for writ of habeas corpus filed on August 7, 2012, but that petition was denied because his arguments were procedurally defaulted. *Newton v. Hobbs*, No. 5:12-cv-301 (E.D. Ark. 2012).

As noted in Respondent's motion, the Court lacks jurisdiction to consider Petitioner's current claims because his petition is successive. "Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate

court of appeals for an order authorizing the district court to consider the application." 28 U.S.C.A. § 2244(b)(3)(A). Petitioner has not sought or received "authorization from the Court of Appeals before filing his second challenge," so the Court cannot hear his arguments. *Burton v. Stewart*, 549 U.S. 147, 153 (2007).

IT IS THEREFORE ORDERED that Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. No. 2) be, and it is hereby, dismissed, without prejudice. The relief prayed for is DENIED.

SO ORDERED this 29th day of July, 2014.

United States Magistrate Judge